

Service Date: August 29, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF The Application	)	
Of the MONTANA POWER COMPANY for	)	
Authority to Implement a Qualify-	)	UTILITY DIVISION
ing Facilities Cost Tracking Mech-	)	
anism and for Approval to Increase	)	DOCKET NO. 90.3.17
Rates and Charges for Electric	)	
Service in the State of Montana	)	ORDER NO. 5465d
to Reflect QF Tracking Costs and	)	
Increased Depreciation Expense.	)	

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FINAL ORDER

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BACKGROUND

1. On March 1, 1990, the Montana Power Company (MPC) filed an application with the Montana Public Service Commission (Commission) for authority to implement a Qualifying Facilities (QF) Cost Tracking Mechanism and for approval to increase electric rates in Montana to reflect QF tracking costs and increased depreciation expense. MPC stated in its application that this limited issue filing was contemplated by the Commission in Order No. 5360c, Finding of Fact No. 19, Docket No. 88.6.15, and accordingly MPC requested that the Commission's minimum filing requirements be waived.

2. If granted in full, the net effect of MPC's application would be to increase MPC's annual electric revenues by \$8,510,156. The QF costs are those projected by MPC for the period April 1, 1990, through December 1990. The QF costs for 1990 also include the costs of purchasing power from the DNRC-Broadwater Dam hydroelectric project since June of 1989, and from the Montana One waste coal QF project, which was scheduled to begin operation in March of 1990. (Montana One is a waste coal generating plant located at Colstrip, Montana.) MPC determined that the annual increase needed due to these QF costs is \$6,555,994. MPC states that a 1988 depreciation

study update supports an annual electric revenue increase of \$1,954,162. MPC requested interim approval of its proposed rate schedules by April 1, 1990.

3. On March 13, 1990, the Commission issued Interim Order No. 5465. In Order No. 5465 the Commission recognized that MPC's rates may not reflect all QF costs. The Commission authorized MPC to record actual QF costs incurred after approval of tariffs filed in compliance with Order No. 5465. Order No. 5465 did not address depreciation expense, and did not affect MPC's electric rates.

4. On April 11, 1990, the Commission issued a Notice of Application and Intervention Deadline and Proposed Procedural Order in Docket No. 90.3.17. The Proposed Procedural Order contemplated an opening day of hearing on September 19, 1990. The Commission issued a final Procedural Order on April 26, 1990. On May 14, 1990, the Commission granted intervention to the Montana Consumer Counsel (MCC) and the Large-User Intervenor Group (LUIG). The Commission granted late intervention to Louisiana Pacific Corporation as a member of the LUIG. MCC actively participated in all phases of this Docket. The LUIG participated in the QF tracker issue only.

5. On May 22, 1990, the Commission issued Order No. 5465a, a second interim order in this Docket. In Order No. 5465a the Commission approved a \$4,974,445 increase in revenues to reflect annualized QF costs and 50 percent of costs associated with the Montana One project. The Commission indicated that it would consider at a later date the reflection in rates of the balance of QF costs accounted for by MPC pursuant to Order No. 5465. The Commission disallowed in rates those QF costs incurred prior to the Order No. 5465 compliance tariff approval date. The Commission made no determination in Order No. 5465a concerning the proposed QF tracking mechanism and it denied any interim rate increase to reflect the asserted increase in depreciation expense.

6. On June 4, 1990, MPC filed a Motion for Reconsideration of Order No. 5465a and an accompanying brief. MPC argued in its brief that Order No. 5465a was defective on several legal grounds. However, the fundamental reason for MPC's concern was its interpretation of Order No. 5465a as not providing sufficient assurance that MPC would be able to recover prudently incurred QF costs, including the balance of Montana One costs recorded pursuant to Order No. 5465, but not

recovered pursuant to Order No. 5465a. In Order No. 5465b, Order on Reconsideration, the Commission responded by indicating that it intends to pass through all prudently incurred net QF costs recorded pursuant to Order No. 5465. With this clarification the Commission denied MPC's Motion for Reconsideration.

7. On June 19, 1990, the MCC moved to suspend the procedural schedule because of certain discovery problems. On June 26, 1990, the Commission granted MCC's motion and indicated that a revised procedural schedule would be issued. On August 15, 1990, the Commission issued a revised procedural schedule that contemplated a December 4, 1990, hearing date. On November 1, 1990, the Commission issued a Notice of Public Hearing in Docket No. 90.3.17; the hearing was to begin on December 4, 1990.

8. On November 15, 1990, the Commission received from the LUIG, and with the consent of the other parties, a Stipulated Motion to Bifurcate and Reschedule Hearing on Qualifying Facilities Issues. The LUIG indicated that MPC, through its rebuttal filing, had made significant changes to its QF tracking mechanism proposal that would require additional time for discovery and response. On November 19, 1990, the Commission granted the Motion in part: the hearing date, on depreciation issues only, was revised to December 5, 1990; the QF issues were consolidated for hearing purposes with Docket No. 90.6.39.

9. On December 4, 1990, MPC and MCC negotiated a settlement of depreciation issues for MPC's electric utility. On December 5, 1990, MPC and MCC appeared at the time and place set MPC for hearing on the depreciation issues and indicated that agreement had been reached but that a written stipulation had not been completed. The Commission vacated the hearing in anticipation of a written agreement.

10. On January 21, 1991, the Commission received from MPC and MCC a Stipulation Regarding Electric Plant and Electric Portion of Common Plant Depreciation Rates and Expense and a joint motion for approval of the stipulation. In the motion MPC and MCC indicated that the stipulation settled electric depreciation issues in Docket Nos. 90.3.17 and 90.6.39 because MPC's depreciation proposal for its electric utility was the same in both Dockets. On February 5, 1991, the

Commission issued Order No. 5465c approving the stipulation as proposed. The depreciation rates agreed upon will be effective prospectively from the date of the final order in Docket No. 90.6.39.

11. On March 15, 1991, the Commission issued a Notice of Public Hearing on the remaining issue in Docket No. 90.3.17: MPC's proposal to implement a QF cost tracking mechanism. Hearing was held on April 29, 1991. Simultaneous opening and reply briefs were filed on May 31, 1991, and June 14, 1991, respectively.

RESPONSE TO MPC'S OBJECTIONS  
TO STAFF INTRODUCTION OF EVIDENCE

12. In this Docket (Tr. 141-142), MPC objected to the Commission staff's introduction into evidence of all responses to staff data requests. MPC argued that staff's introduction of evidence 1) was in violation of 69-2-102, MCA, 2) was made by a nonparty when only parties have a right to introduce evidence, and 3) was improper because, as staff is not an advocate in these proceedings, MPC cannot know the purpose of the introduction of the data responses. The Commission took the objections under advisement and will address them here.

13. The Commission has addressed objections to its staff's introduction of evidence in previous orders. In Order No. 5399b, Docket No. 88.11.53, the Commission responded in detail to objections from Montana-Dakota Utilities that were very similar to the objections at issue here. The Commission hereby incorporates by reference paragraphs 8-23 of Order No. 5399b as a response to the objections in these Dockets.

14. Specifically, and in summary, the Commission found in Order No. 5399b, paragraphs 16-23, that 69-2-102, MCA, and ARM 38.2.601(n) and 38.2.3902(1) authorizes Commission staff introduction of evidence. The third sentence of 69-2-102, MCA, which MPC relies on to preclude staff introduction of evidence, must be read, according to standard rules of statutory construction and in light of legislative history, as a prohibition on Commission introduction of evidence through an outside expert without first consulting with the parties. The Commission did not introduce evidence in these proceedings through an outside expert, and consequently the Commission is not in violation of 69-2-102, MCA.

15. MPC contends that the nonparty staff cannot introduce evidence because only parties have a right to introduce evidence. At paragraphs 9-13 of Order No. 5399b the Commission addressed this contention by noting 1) that Commission rules specifically allow for the introduction of evidence by staff, and 2) that independent investigation by the decision-maker is one of the things that distinguishes administrative decision-making from judicial decision-making.

16. MPC also contends that staff introduction of evidence is improper because MPC does not know the purpose for which the evidence is being introduced. This contention has been discussed by the Commission at various places in Order No. 5399b, paragraphs 8-23, and also Docket No. 88.6.15, Order No. 5360e, paragraphs 72-83. The purpose for staff introduction of evidence was stated succinctly by the Commission in Order No. 5399b, paragraph 14, when it said that, "The Commission has ... hired staff ... to make sure, through introduction of data responses or other evidence, or through cross-examination, that the record, to the extent possible, contains all the facts necessary to support a variety of reasoned decision on the issues."

17. The Commission finds that MPC has provided no reason why a ruling on these objections should differ from previous rulings on similar objections. Therefore, MPC's objections to staff introduction of evidence in Docket Nos. 90.6.39 and 90.3.17 are overruled and the responses to staff data requests are admitted into the record.

#### MONTANA ONE PROJECT

18. In the Company's direct case, a 1990 forecast for the Montana One project was based on Montana One's nameplate capacity of 35,000 kw, its contracted capacity of 30,000 kw, its contracted capacity factor of 85 percent and the QFLT-84 rate schedule. This forecast resulted in an estimate for the Montana One project of 200,340 MWH and expense of \$7,887,768. MPC, in its rebuttal testimony in this Docket, presented a 1991 forecast for the Montana One project. That forecast resulted in an estimate for the project of 260,610 MWH and expense of \$11,987,803. The values for the Montana One project included in MPC's rebuttal in Docket No. 90.6.39 were the same for energy, and expense was reduced to the level of \$11,585,715. The Commission finds that the values which should be included in base rates for the Montana One project are 260,610 MWH and expense of \$11,585,715.

### BROADWATER DAM

19. In MPC's direct case, the forecast for Broadwater Dam was based on a contracted capacity of 10,000 kw and the LTQF-86 rate schedule. This forecast resulted in an estimate for the Broadwater Dam of 62,082 MWH and expense of \$2,702,839.

20. On August 22, 1990, Jan W. Michael filed testimony in this Docket on behalf of the Large User Intervenor Group (LUIG). Mr. Michael noted that MPC's response to LUIG Data Request No. 20 showed actual values of the QF energy production from Broadwater Dam for the first seven months of 1990. The actual energy produced by Broadwater Dam for January through June 1990, was 26,392 MWH compared with MPC's forecast for Broadwater Dam of 40,652 MWH. The actual capacity produced by Broadwater Dam for January through July 1990, was 60,383 kw-months, compared with MPC's forecast of 70,000 kw-months.

21. In the Company's rebuttal filing, Bill Pascoe indicated that MPC was proposing a new forecast for Broadwater Dam. The original capacity forecast was based on the contract capacity of 10 MW per month. However, on June 29, 1990, the Montana Department of Natural Resources and Conservation (DNRC), the owner of Broadwater Dam, provided MPC with revised monthly contract capacities. The new contract capacities total 102.5 MW-months for the contract year MPC also changed the energy forecast for Broadwater Dam. The Company's original forecast was based on 50-year median streamflows (1929-1978) and relied on Broadwater Dam's theoretical ability to convert water to energy at a rate of 1.60 kw/cfs. This theoretical conversion factor was supplied to MPC by DNRC. The average conversion factor for the fifteen full months of operation (July 1989-September 1990) is 1.277 kw/cfs. The revised forecast presented by the Company uses this average conversion factor. MPC also replaced the 50-year median streamflows with 75-year average streamflows (1915-1989). This change was made to be consistent with the streamflow period the Company proposed for normalizing energy production from its hydroelectric plants in Docket No. 90.6.39. In its rebuttal filing MPC included Broadwater Dam at 51,665 MWH, with expense of \$2,324,578. The Company, in its rebuttal testimony in Docket No. 90.6.39, reflected Broadwater Dam at 51,665 MWH, and expense of 52,305,839. The Commission finds that the values which should be included in base rates for Broadwater Dam are 51,665 MWH and expense of \$2,305,839.

OTHER QFs

22. In the Company's original filing in this Docket, a forecast for the fifteen smaller QF projects was prepared. The forecast for each of these projects was based on that project's contracted capacity, contracted capacity factor and the applicable rate schedule. This forecast resulted in an estimate for the Other QFs of 26,580 MWH and expense of \$1,517,465. In its rebuttal testimony MPC included the Other QFs at 13,463 MWH and expense of \$783,313. In its original filing, MPC prepared a forecast for the Other QFs based on contract parameters. In response to PSC Data Request No. 1, this forecast was replaced with actual data for 1989. The Company believes the actual 1989 data is the best estimate of production for the Other QFs. The values used for the Other QFs in the Company's rebuttal testimony in Docket No. 90.6.39 were identical to those in the rebuttal filing in this Docket. The Commission finds that the values which should be included in base rates for the Other QFs are 13,463 MWH and expense of \$783,313.

QF TRACKING APPROVED IN INTERIM ORDER 5465

23. As has been noted above, the Commission issued Interim Order No. 5465 which authorized MPC to track QF expenses after approval of tariffs filed in compliance with that order. In Interim Order No. 5465a, the Commission granted MPC an interim increase of \$4,974,445 which recognized the costs of Broadwater Dam, the other QF's and fifty percent of Montana One. On June 18, 1991, MPC filed worksheets which detail the net tracking amounts from March 21, 1990, through May 31, 1991. The total unreflected QF cost for the period March 21, 1990, through May 31, 1991, is as follows:

3/21/90 through 12/31/90	\$2,281,430
1/1/91 through 5/31/91	<u>1,231,646</u>
Total	\$3,513,076

24. On August 13, 1991, MPC filed updated worksheets which detail the net tracking amounts from March 21, 1990, through July 11, 1991. The partial month of July reflects the fact that rates changed on July 12, 1991, per Order No. 5484k in Docket No. 90.6.39, which completes the tracking in this docket. The total unreflected QF cost for the period March 21, 1990, through July 11, 1991, is as follows:

3/21/90 through 12/31/90	\$2,281,429
1/1/91 through 7/11/91	<u>1,502,193</u>
Total	\$3,783,622

25. The Commission finds that the updated tracking amount filed by MPC on August 13, 1991, represents prudently-incurred QF expenses and hereby approves an increase in rates of \$3,783,622. The amortization of this amount will be discussed in the order section of this order.

#### CONTESTED ISSUES

26. In its original filing in this Docket, MPC included costs for the Broadwater Dam from June 1990, through December 31, 1990. In addition, MPC included a forecast of Broadwater Dam costs for the 1990 operating year. Mr. Haffey noted that MPC had attempted to include the costs of Broadwater Dam in Docket No. 88.6.15. According to Mr. Haffey that plan was rejected by the Commission.

27. Mr. Clark, the witness for MCC, addressed the issue of Broadwater Dam costs in his direct testimony (Exh. MCC-2, pp. 813). Mr. Clark notes that the contract between MPC and DNRC was dated October 30, 1987. Section 2.2 of the contract indicates that the operation was expected to begin on April 1, 1989. Even though MPC expected Broadwater Dam to come on line at or near April 1, 1989, the Company failed to apply for approval of a specific QF tariff provision that would include any Broadwater costs until March 1, 1990, fully ten months after the project was producing and selling power to MPC. It was not until the rebuttal phase of Docket No. 88.6.15 that the Company requested rate treatment for the Broadwater Dam costs, and even then it was not done via a Qualifying Facilities Adjustment Clause (QFAC). The Company, of its own volition, delayed in filing a proposed tariff mechanism that could have implemented Order No. 5091c, FOF 249 from March 1987, to March 1990.

28. Mr. Clark notes that the only previous attempt to recover Broadwater Dam costs was Mr. Neill's filing of rebuttal testimony in Docket No. 88.6.15 (thus attempting to overlay a mid-1989 cost onto a 1987 test year). Mr. Clark concluded that the failure to receive timely revenue recovery of the Broadwater Dam costs was not the result of any of Montana's "regulatory practices," but rather, is a direct result of MPC's own failure to seek timely recovery in an appropriate proceeding.



Mr. Clark recommended that 1989 Broadwater costs be excluded from prospective revenues. Further, he stated:

Such recovery of a past cost in future rates is clearly retroactive ratemaking and, therefore, is inappropriate for ratemaking purposes. (Exh. MCC-2, p. 13)

29. At the hearing Ms. Wright representing MCC asked Mr. Haffey the following question:

Q. Mr. Haffey, would the inclusion of 1989 costs in future rates be a form of retroactive ratemaking?

A. As I testified, under normal circumstances that I think it would be. Our position in this docket is that the Commission's establishment or approval of a tracking mechanism gave us, and gives us, some hope that those costs that we incurred, even prior to the request that we filed on March 1, I think, of 1990, as well as other costs that were net QF costs that were not reflected in the Final Order in Docket 88.6.15, should be recoverable.

We appreciate that that's an arguable ratemaking point, and I think in the testimony I indicated in some language that under normal circumstances, that would be considered something like what you characterized as retroactive ratemaking. But in this case we believe we have not only a right but an obligation to at least raise that question of whether the tracking mechanism approved in Docket No. 84.10.64 enables us to both track and recover those costs, even though they come prior to the existence of a tariff, of a well established tracking tariff. (Tr. pp. 18-19)

30. The Commission finds that circumstances have changed since a tracking mechanism was approved in Docket No. 84.10.64. In that Docket, Mr. Haffey indicated that QF expenses would reach \$43 million by the year 1987. The actual level of QF expenses was a mere fraction of that amount. QF expenses for the years 1984 through 1987 were \$1,568,670. (Exh. MCC-2, p. 11) Given the changed circumstances, it is not appropriate to place undue reliance on a decision which was influenced by the Company's projected QF expenses.

31. The Commission finds that MPC failed to request recovery of the Broadwater Dam expenses in a timely manner. The Company attempted to introduce this item during the rebuttal

phase of Docket No. 88.6.15, a proposal which was properly rejected by this Commission, because it was beyond the twelve-month known and measurable period (1988) in that Docket. At the hearing Ms. Wright asked Mr. Haffey several questions about this issue:

Q. Did the Commission's decision on that point order the Company in any way not to file for Broadwater Dam costs before any particular date?

A. No.

Q. Did Consumer Counsel advocate that the Company shouldn't be able to approach the Commission before any particular date?

A. No. Not that I remember. (Tr. p. 25)

The decision not to file for QF tracking until March 1, 1990, was a decision made by MPC. Given the Company's choice to delay the request for QF tracking, the Commission finds that to allow 1989 costs associated with the Broadwater Dam would constitute retroactive ratemaking. The Commission denies MPC's request for recovery of 1989 Broadwater Dam costs due to the prohibition on retroactive ratemaking.

#### NEED FOR A QF TRACKER

32. The Company believes that it should have the continuing capability to recover net QF costs as they are incurred. In its filing MPC noted that by law, it must purchase QF power. A tracker would provide fairness according to MPC in that it would assure that MPC would not be harmed by having to purchase QF power by virtue of regulatory lag.

33. MCC recommended that the proposed QFAC be rejected. Mr. Clark indicated that tracking mechanisms are not appropriate for costs that are not particularly volatile, not unpredictable within limits and not very significant in terms of the utility's total revenue requirement.

34. Mr. Michael, the LUIG witness, recommended that the proposed QF tracker be rejected. Mr. Michael instead recommended that the Commission treat QF costs similarly to other purchased power costs and recover those costs in base rates utilizing appropriate cost-of-service allocation methodologies. Adjustments to QF resource costs in the future should be made by MPC filing a rate case, using actual test period data.

35. In its opening brief at p. 4, LUIG stated the following:

The record is uncontroverted that the consequences of rejecting or deferring the QF tracker for the time being are modest: existing QF's costs are generally reflected in the final rates resulting from Docket No. 90.6.39, and no major new QF facility costs will be incurred until 1994 at the earliest.

36. The Commission finds that the testimony from MCC and LUIG on the issue of the need for a QF tracker is persuasive. Due to the inclusion of all current QF costs in the final order in Docket No. 90.6.39, there are no QF costs which are not currently reflected in rates. Further, the Commission has issued Interim Order No. 5561 in Docket No. 91.6.24, which granted MPC increased rates to reflect contract increases for the Montana One Project and Broadwater Dam. Looking to the future, the only two QF projects which are of any significant size are the BGI facility and the Flint Creek facility. The BGI facility is not scheduled to come on line until 1994. The Flint Creek facility is not expected to have a contract capacity of more than two megawatts. The Commission finds that there is no need to implement a QF tracker for MPC. In the future, if MPC expects a large QF to come on line, the Company should request rate treatment in a general rate case to assure proper recovery of those costs. As to the need for a QF tracker due to increased costs related to QF contracts see FOF 6 in Interim Order No. 5561. MPC's request for a QF tracker is denied.

#### CONCLUSIONS OF LAW

1. Applicant, Montana Power Company, provides electric service within the State of Montana and as such is a "public utility" within the meaning of Section 69-3-101, MCA.

2. The Montana Public Service Commission properly exercises jurisdiction over the Applicant's Montana rates and operations pursuant to Title 69, Chapter 3, MCA.

#### ORDER

THEREFORE THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. MPC shall accrue the QF tracking amount of \$3,783,622 from the effective date of this order to August 29, 1991.

DONE IN OPEN SESSION at Helena, Montana, this 26th day of August, 1991, by a 5 - 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Chairman

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DANNY OBERG, Vice Chairman

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WALLACE W. "WALLY" MERCER, Commissioner

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JOHN B. DRISCOLL, Commissioner

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BOB ANDERSON, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.